

Introduced by Senator Ackerman

February 19, 2002

An act to amend Sections 2924b and 2941 of the Civil Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

SB 1504, as introduced, Ackerman. Mortgages and deeds of trust.

(1) Existing law requires a person recording a notice of default of a mortgage or deed of trust to perform specified actions, one of which is to provide a copy of a notice of sale to the Internal Revenue Service if a "Notice of Federal Tax Lien" has been recorded against the real property to which the notice of sale applies.

This bill would provide that the failure to provide the Internal Revenue Service the notice of sale is sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee. The bill would permit the recision of the trustee's deed to be recorded, as specified.

(2) Existing law provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust. Existing law requires that the trustee deliver a copy of the reconveyance to the beneficiary if known, and requires that the reconveyance instrument to specify the trustor as the person to whom the recorder will deliver the recorded instrument.

This bill would permit the reconveyance instrument to alternatively specify that the recorder shall deliver the recorded instrument to the trustee's address. The bill would require that, if the trustee's address is



specified for delivery, the trustee mail the recorded instrument to the trustor or the successor in interest at the last known address for that party.

(3) Existing law provides that when any mortgage has been satisfied, the mortgagee, or its assignee, shall execute and record, or cause to be recorded, a certificate of discharge, except as specified. Existing law also provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, shall execute a full reconveyance and record or cause it to be recorded, except as specified. Existing law defines the phrases “cause to be recorded” and “cause it to be recorded” in connection with these duties to include sending full reconveyance or certificate of discharge by certified mail or by courier service, which is required to include the signature of the recipient.

This bill would remove the requirement of the recipient’s signature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924b of the Civil Code is amended to
2 read:
3 2924b. (a) Any person desiring a copy of any notice of
4 default and of any notice of sale under any deed of trust or
5 mortgage with power of sale upon real property or an estate for
6 years therein, as to which deed of trust or mortgage the power of
7 sale cannot be exercised until these notices are given for the time
8 and in the manner provided in Section 2924 may, at any time
9 subsequent to recordation of the deed of trust or mortgage and
10 prior to recordation of notice of default thereunder, cause to be
11 filed for record in the office of the recorder of any county in which
12 any part or parcel of the real property is situated, a duly
13 acknowledged request for a copy of the notice of default and of
14 sale. This request shall be signed and acknowledged by the person
15 making the request, specifying the name and address of the person
16 to whom the notice is to be mailed, shall identify the deed of trust
17 or mortgage by stating the names of the parties thereto, the date of
18 recordation thereof, and the book and page where the deed of trust
19 or mortgage is recorded or the recorder’s number, and shall be in
20 substantially the following form:
21



“In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19____, in Book _____ page _____ records of _____ County, (or filed for record with recorder’s serial number _____, _____ County) California, executed by _____ as trustor (or mortgagor) in which _____, is named as beneficiary (or mortgagee) and _____ as trustee be mailed to _____ at _____.

Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____”

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the “last known address” of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor’s last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a “Notice of Lien for Postponed Property Taxes” has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail, an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue laws” has been recorded against the real property to which the notice of sale applies. *The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the trustee’s deed, at the option of either the successful bidder at the trustee’s sale or the trustee. A recision of the trustee’s sale pursuant to this paragraph may be recorded in a notice of recision pursuant to Section 1058.5.*

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person

1 from the fact that the mailing address used by the county recorder
2 is the address of the attorney, agent, or employee.

3 (d) Any deed of trust or mortgage with power of sale hereafter
4 executed upon real property or an estate for years therein may
5 contain a request that a copy of any notice of default and a copy
6 of any notice of sale thereunder shall be mailed to any person or
7 party thereto at the address of the person given therein, and a copy
8 of any notice of default and of any notice of sale shall be mailed
9 to each of these at the same time and in the same manner required
10 as though a separate request therefor had been filed by each of
11 these persons as herein authorized. If any deed of trust or mortgage
12 with power of sale executed after September 19, 1939, except a
13 deed of trust or mortgage of any of the classes excepted from the
14 provisions of Section 2924, does not contain a request of the
15 trustor or mortgagor for special notice at the address of the person
16 given therein or does contain such a request but no address of the
17 person is given therein and if no request for special notice by the
18 trustor or mortgagor in substantially the form set forth in this
19 section has subsequently been recorded, a copy of the notice of
20 default shall be published once a week for at least four weeks in
21 a newspaper of general circulation in the county in which the
22 property is situated, the publication to commence within 10
23 business days after the filing of the notice of default. In lieu of
24 publication, a copy of the notice of default may be delivered
25 personally to the trustor or mortgagor within the 10 business days
26 or at any time before publication is completed, or by posting the
27 notice of default in a conspicuous place on the property and
28 mailing the notice to the last known address of the trustor.

29 (e) Any person required to mail a copy of a notice of default or
30 notice of sale to each trustor or mortgagor pursuant to subdivision
31 (b) or (c) by registered or certified mail shall simultaneously cause
32 to be deposited in the United States mail, with postage prepaid and
33 mailed by first-class mail, an envelope containing an additional
34 copy of the required notice addressed to each trustor or mortgagor
35 at the same address to which the notice is sent by registered or
36 certified mail pursuant to subdivision (b) or (c). The person shall
37 execute and retain an affidavit identifying the notice mailed,
38 showing the name and residence or business address of that person,
39 that he or she is over the age of 18 years, the date of deposit in the
40 mail, the name and address of the trustor or mortgagor to whom



1 sent, and that the envelope was sealed and deposited in the mail
2 with postage fully prepaid. In the absence of fraud, the affidavit
3 required by this subdivision shall establish a conclusive
4 presumption of mailing.

5 (f) No request for a copy of any notice filed for record pursuant
6 to this section, no statement or allegation in the request, and no
7 record thereof shall affect the title to real property or be deemed
8 notice to any person that any person requesting copies of notice has
9 or claims any right, title, or interest in, or lien or charge upon the
10 property described in the deed of trust or mortgage referred to
11 therein.

12 (g) “Business day,” as used in this section, has the meaning
13 specified in Section 9.

14 SEC. 2. Section 2941 of the Civil Code is amended to read:

15 2941. (a) Within 30 days after any mortgage has been
16 satisfied, the mortgagee or the assignee of the mortgagee shall
17 execute a certificate of the discharge thereof, as provided in
18 Section 2939, and shall record or cause to be recorded in the office
19 of the county recorder in which the mortgage is recorded. The
20 mortgagee shall then deliver, upon the written request of the
21 mortgagor or the mortgagor’s heirs, successors, or assignees, as
22 the case may be, the original note and mortgage to the person
23 making the request.

24 (b) (1) Within 30 calendar days after the obligation secured by
25 any deed of trust has been satisfied, the beneficiary or the assignee
26 of the beneficiary shall execute and deliver to the trustee the
27 original note, deed of trust, request for a full reconveyance, and
28 other documents as may be necessary to reconvey, or cause to be
29 reconveyed, the deed of trust.

30 (A) The trustee shall execute the full reconveyance and shall
31 record or cause it to be recorded in the office of the county recorder
32 in which the deed of trust is recorded within 21 calendar days after
33 receipt by the trustee of the original note, deed of trust, request for
34 a full reconveyance, the fee that may be charged pursuant to
35 subdivision (e), recorder’s fees, and other documents as may be
36 necessary to reconvey, or cause to be reconveyed, the deed of trust.

37 (B) The trustee shall deliver a copy of the reconveyance to the
38 beneficiary, its successor in interest, or its servicing agent, if
39 known. The reconveyance instrument shall specify ~~the~~ *one of the*
40 *following*:

1 (i) The trustor as the person to whom the recorder will deliver
2 the recorded instrument pursuant to Section 27321 of the
3 Government Code.

4 (ii) That the recorder shall deliver the recorded instrument to
5 the trustee's address. If the trustee's address is specified for
6 delivery, the trustee shall mail the recorded instrument to the
7 trustor or the successor in interest to the last known address for
8 that party.

9 (C) Following execution and recordation of the full
10 reconveyance, upon receipt of a written request by the trustor or
11 the trustor's heirs, successors, or assignees, the trustee shall then
12 deliver, or caused to be delivered, the original note and deed of
13 trust to the person making that request.

14 (D) If the note or deed of trust, or any copy of the note or deed
15 of trust, is electronic, upon satisfaction of an obligation secured by
16 a deed of trust, any electronic original, or electronic copy which
17 has not been previously marked solely for use as a copy, of the note
18 and deed of trust, shall be altered to indicate that the obligation is
19 paid in full.

20 (2) If the trustee has failed to execute and record, or cause to be
21 recorded, the full reconveyance within 60 calendar days of
22 satisfaction of the obligation, the beneficiary, upon receipt of a
23 written request by the trustor or trustor's heirs, successor in
24 interest, agent, or assignee, shall execute and acknowledge a
25 document pursuant to Section 2934a substituting itself or another
26 as trustee and issue a full reconveyance.

27 (3) If a full reconveyance has not been executed and recorded
28 pursuant to either paragraph (1) or paragraph (2) within 75
29 calendar days of satisfaction of the obligation, then a title
30 insurance company may prepare and record a release of the
31 obligation. However, at least 10 days prior to the issuance and
32 recording of a full release pursuant to this paragraph, the title
33 insurance company shall mail by first-class mail with postage
34 prepaid, the intention to release the obligation to the trustee,
35 trustor, and beneficiary of record, or their successor in interest of
36 record, at the last known address.

37 (A) The release shall set forth:

38 (i) The name of the beneficiary.

39 (ii) The name of the trustor.

40 (iii) The recording reference to the deed of trust.

1 (iv) A recital that the obligation secured by the deed of trust has
2 been paid in full.

3 (v) The date and amount of payment.

4 (B) The release issued pursuant to this subdivision shall be
5 entitled to recordation and, when recorded, shall be deemed to be
6 the equivalent of a reconveyance of a deed of trust.

7 (4) Where an obligation secured by a deed of trust was paid in
8 full prior to July 1, 1989, and no reconveyance has been issued and
9 recorded by October 1, 1989, then a release of obligation as
10 provided for in paragraph (3) may be issued.

11 (5) Paragraphs (2) and (3) do not excuse the beneficiary or the
12 trustee from compliance with paragraph (1). Paragraph (3) does
13 not excuse the beneficiary from compliance with paragraph (2).

14 (6) In addition to any other remedy provided by law, a title
15 insurance company preparing or recording the release of the
16 obligation shall be liable to any party for damages, including
17 attorneys' fees, which any person may sustain by reason of the
18 issuance and recording of the release, pursuant to paragraphs (3)
19 and (4).

20 (7) A beneficiary may, at its discretion, in accordance with the
21 requirements and procedures of Section 2934a, substitute the title
22 company conducting the escrow through which the obligation is
23 satisfied for the trustee of record, in which case the title company
24 assumes the obligation of a trustee under this subdivision, and may
25 collect the fee authorized by subdivision (e).

26 (8) In lieu of delivering the original note and deed of trust to the
27 trustee within 30 days of loan satisfaction, as required by
28 paragraph (1) of subdivision (b), a beneficiary who executes and
29 delivers to the trustee a request for a full reconveyance within 30
30 days of loan satisfaction may, within 120 days of loan satisfaction,
31 deliver the original note and deed of trust to either the trustee or
32 trustor. If the note and deed of trust are delivered as provided in this
33 paragraph, upon satisfaction of the note and deed of trust, the note
34 and deed of trust shall be altered to indicate that the obligation is
35 paid in full. Nothing in this paragraph alters the requirements and
36 obligations set forth in paragraphs (2) and (3).

37 (c) For the purposes of this section, the phrases "cause to be
38 recorded" and "cause it to be recorded" include, but are not
39 limited to, sending by certified mail with the United States Postal
40 Service or by an independent courier service using its tracking

1 service that provides documentation of receipt and delivery;
2 ~~including the signature of the recipient,~~ the full reconveyance or
3 certificate of discharge in a recordable form, together with
4 payment for all required fees, in an envelope addressed to the
5 county recorder's office of the county in which the deed of trust
6 or mortgage is recorded. Within two business days from the day
7 of receipt, if received in recordable form together with all required
8 fees, the county recorder shall stamp and record the full
9 reconveyance or certificate of discharge. Compliance with this
10 subdivision shall entitle the trustee to the benefit of the
11 presumption found in Section 641 of the Evidence Code.

12 (d) The violation of this section shall make the violator liable
13 to the person affected by the violation for all damages which that
14 person may sustain by reason of the violation, and shall require that
15 the violator forfeit to that person the sum of five hundred dollars
16 (\$500).

17 (e) (1) The trustee, beneficiary, or mortgagee may charge a
18 reasonable fee to the trustor or mortgagor, or the owner of the land,
19 as the case may be, for all services involved in the preparation,
20 execution, and recordation of the full reconveyance, including, but
21 not limited to, document preparation and forwarding services
22 rendered to effect the full reconveyance, and, in addition, may
23 collect official fees. This fee may be made payable no earlier than
24 the opening of a bona fide escrow or no more than 60 days prior
25 to the full satisfaction of the obligation secured by the deed of trust
26 or mortgage.

27 (2) If the fee charged pursuant to this subdivision does not
28 exceed forty-five dollars (\$45), the fee is conclusively presumed
29 to be reasonable.

30 (3) The fee described in paragraph (1) may not be charged
31 unless demand for the fee was included in the payoff demand
32 statement described in Section 2943.

33 (f) For purposes of this section, "original" may include an
34 optically imaged reproduction when the following requirements
35 are met:

36 (1) The trustee receiving the request for reconveyance and
37 executing the reconveyance as provided in subdivision (b) is an
38 affiliate or subsidiary of the beneficiary or an affiliate or subsidiary
39 of the assignee of the beneficiary, respectively.



(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(g) No fee or charge may be imposed on the trustor in connection with, or relating to, any act described in this section except as expressly authorized by this section.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

(i) (1) In any action filed before January 1, 2002, that is dismissed as a result of the amendments to this section enacted at the 2001–02 Regular Session, the plaintiff shall not be required to pay the defendant’s costs.

(2) Any claimant, including a claimant in a class action lawsuit, whose claim is dismissed or barred as a result of the amendments to this section enacted at the 2001–02 Regular Session, may, within 6 months of the dismissal or barring of the action or claim, file or refile a claim for actual damages occurring before January 1, 2002, that were proximately caused by a time lapse between loan satisfaction and the completion of the beneficiary’s obligations as required under paragraph (1) of subdivision (b). In any action brought under this section, the defendant may be found liable for actual damages, but may not be found liable for any civil penalty authorized by Section 2941.

(j) Notwithstanding any other penalties, if a beneficiary collects a fee for reconveyance and thereafter has knowledge, or should have knowledge, that no reconveyance has been recorded, the beneficiary shall cause to be recorded the reconveyance, or in the event a release of obligation is earlier and timely recorded, the beneficiary shall refund to the trustor the fee charged to perform the reconveyance. Evidence of knowledge includes, but is not

- 1 limited to, notice of a release of obligation pursuant to paragraph
- 2 (3) of subdivision (b).

O

